IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 29756 of 2006(P)

PETITIONERS:
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1. **M.ABDUL JALEEL, AGED 67,**
   S/O.MUHAMMED ISMAIL, VADASSERIKONAM,
   CHERUNNIYOOR, VARKALA.

2. **S.BABU, AGED 42, S/O.SIVASANKARAN,**
   A.J.SAWMILL, VADASSERIKONAM, CHERUNNIYOOR,
   VARKALA.

3. **S.KRISHNAN, AGED 62,**
   S/O.SANKARAN, NEDIYAVILA VEEDU,
   VADASSERI KONAM, CHERUNNIYOOR, VARKALA.

4. **SUBADRA, AGED 60, D/O.BHARGAVAN,**
   NEDIYAVILA VEEDU, VADASSERIKONAM,
   CHERUNNIYOOR, VARKALA.

5. **DAMAYANTHI, AGED 58,**
   D/O.VASUDEVAN, KUZHIYIL VEEDU,
   KIDAVATHUVILA, CHERUNNIYOOR, VARKALA.

6. **FASILUDEEN, AGED 56,**
   S/O.MUHAMMED KUNJU, SHIRAJ MANZIL,
   PALACHIRA, CHERUNNIYOOR, VARKALA.

7. **SUHARA BEEVI, AGED 42,**
   D/O.MUHAMMED KUNJU, SHAHANA MANZIL,
   PALACHIRA, CHERUNNIYOOR, VARKALA.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENTS:
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1. **THE DIARY REGISTRAR (DIRECTOR),**
   DIARY DEVELOPMENT DEPARTMENT,
   THIRUVANANTHAPURAM.

...2/-

2. THE DEPUTY DIRECTOR, DIARY DEVELOPMENT DEPARTMENT, THIRUVANANTHAPURAM.

3. V.S.RAJU, DIARY FARM INSTRUCTOR (HIGHER GRADE), OFFICE OF THE DEPUTY DIRECTOR, THIRUVANANTHAPURAM, PRESENTLY PART TIME ADMINISTRATOR, NARIKALLU MILK CO-OPERATIVE SOCIETY T.248(D) APCOS, PALACHIRA, VARKALA.

4. THE NARIKALLU MILK CO-OPERATIVE SOCIETY T.248(D) APCOS, PALACHIRA, VARKALA, REPRESENTED BY ITS SECRETARY.

5. THE SUB INSPECTOR OF POLICE, VARKALA.

6. SMT.S.PRABHA, MADATHUVILA, AYANTHI, VARKALA, PRESENTLY WORKING AS MILK COLLECTOR CUM TESTER, NARIKALLU MILK CO-OPERATIVE SOCIETY T.248(D) APCOS.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI for R1,R3&R5
BY ADV. SRI.D.KISHORE for R6

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER NO.D/2383/06 DTD. 7/08/2006 ISSUED BY THE SECOND RESPONDENT.

EXT.P2: COPY OF THE ORDER DTD. 16/06/2006 IN HRMP NO.1287 OF 2005 PASSED BY THE COMMISSION.

EXT.P3: COPY OF THE PETITION DTD. 11/04/2005 SUBMITTED BY 37 MEMBERS.

EXT.P4: COPY OF THE COMPLAINTS DTD. 16/04/2005 SUBMITTED BY THE SIXTH RESPONDENT BEFORE THE FIFTH RESPONDENT.

EXT.P5: COPY OF THE STATEMENT DTD.1/06/2006 SUBMITTED BY THE FIRST PETITIONER BEFORE THE WOMAN'S COMMISSION IN PROCEEDINGS NO.1679/C1/05/KWC.

3RD RESPONDENT'S EXHIBITS:

EXT.R3(1): COPY OF THE REPORT DTD. 30/11/2005 SUBMITTED BY THE DAIRY EXTENSION OFFICER.

EXT.R3(2): COPY OF THE DEPOSITION DTD. 30/11/2005 GIVEN BY THE 6TH RESPONDENT BEFORE THE ENQUIRY OFFICER.

6TH RESPONDENT'S EXHIBIT:

EXT.R6(A): COPY OF THE PETITION DTD. 20/05/2005.

/TRUE COPY/

KSS

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 29756 of 2006

Dated this 26th day of February, 2007

JUDGMENT

The committee members of the Narikallu Milk Co-operative Society at Varkala are the petitioners. The first petitioner is the president of the of the Society. They have filed this writ petition seeking quashment of Ext.P1 order issued by the 2nd respondent – Deputy Director, Diary Development Department in exercise of the powers conferred on him under Section 32(3) of the Co-operative Societies Act superseding the Committee of the Society and posting officer of the Diary Department as a part time administrator for society pending enquiry under Section 65 of the Co-operative Societies Act. The first respondent is the Diary Registrar (Director Diary Development Department). The 2nd respondent is the Deputy Director, the 3rd respondent is the Diary Farm Instructor, (Higher Grade) appointed under Ext.P1 as part time Administrator. The 4th respondent is the Society. The 5th respondent is the Sub Inspector of Police and the 6th

respondent is a lady presently working as Milk Collector cum Tester in the Society whose complaint was instrumental for passage of Ext.P1 order. The petitioners point out that Ext.P1 order is ultra vires the powers conferred on the 2nd respondent under Section 32 (3) of the Act. Those powers can be resorted to and exercised only after an enquiry and not pending enquiry so contend the petitioners. It is further contended by then that Section 32 can be resorted only if the Committee has indulged in or committed any of the acts or deeds enumerated under Section 32 (1) (a) to (d) and not for any other conduct. Enquiries by the petitioners reveal that Ext.P1 order is passed on the basis of some complaint submitted by the 6th respondent before the Kerala Human Rights Commission and the order passed by the said Commission on the said petition. Ext.P2 is a copy of the order dated 16.6.2006 passed by the Human Right Commission in HRMP 1287 of 2005. The petitioner submits that the real facts leading to the institution of the complaint had not been disclosed by the 6th respondent to the Human Right Commission. On two different earlier occasions, disciplinary proceedings were initiated by the Society against the 6th respondent on multifarious charges

including misconduct and dereliction of duty. During the last occasion memo of charges was served on her and in the enquiry conducted by the State it was found that she was guilty of charges. But the punishment order issued against her was set aside on a technical reason and in spite of the repeated warnings, the 6th respondent continued to indulge in misconduct and misappropriation. Ext.P3 is a copy of the mass petition submitted by 37 out of the total 40 members who are supplying milk to the 4th respondent Society. In contemplation of action on the basis of Ext.P3, the 6th respondent complained before the 5th respondent Sub Inspector of Police raising unfounded and baseless allegations against the first petitioner and two others viz. Haridas and Hamsa who are signatories to Ext.P3. Ext.P4 is a copy of that complaint. After conducting the enquiry, the 5th respondent found that the allegations raised by the 6th respondent are frivolous and baseless. The 6th respondent filed a similar complaint before the Kerala Women's Commission. The first petitioner on receipt of notice from the Women's Commission submitted a statement . Proceedings are now pending before the Kerala Woman's Commission. It is during the pendency of the

proceedings before the Kerala Woman's Commission that the 6th respondent filed complaint before the Kerala State Human Right Commission which has resulted in Ext.P2. Ext.P2 order is without jurisdiction and is liable to be set aside. It is on the basis of Ext.P2 that Ext.P1 has been issued and elected committee members have been illegally superseded. Petitioners 2 to 7, against whom there are admittedly no complaint, have been prejudicially affected. Raising various grounds, the writ petition has been filed seeking the relief already indicated.

2. The 6th respondent has filed a detailed counter affidavit denying the grounds raised and the allegations levelled against her. Ext.R6(a) produced along with the counter affidavit is a copy of mass petition dated 20.5.2005 submitted before the respondents 1 and 2 by persons who are described as a real members of the Society. Ext.R6(a) is produced to substantiate the contention that the signatures in Ext.P3 were collected by the first petitioner by representing that the petition is intended to get pension sanctioned for them.

3. The 3rd respondent has also filed counter affidavit justifying Ext.P1 order and explaining the circumstances under

which Ext.P1 was issued. It is stated in the counter affidavit that the 6th respondent, who was milk collector of the 4th respondent, was frequently harassed by the first petitioner and several complaints have been filed by the 6th respondent before the various authorities including the Human Right Commission. Since several complaints were received by the Department preliminary enquiry was conducted and the Enquiry Officer filed report (Ext.R3(1). The enquiry officer has taken the statement from the 6th respondent and recorded the deposition of the 6th respondent Ext.R3(2) is a copy of the deposition. From Ext.R3(1) and R3(2) it has been revealed that some serious illegalities have been committed by the President and the other Committee members of the 4th respondent Society. The Department has taken a decision to conduct a detailed enquiry and the same is going on. It is then stated that the 2nd respondent was satisfied that the finding of the society is prejudicial to the interest of the society and also such satisfaction as well as the direction of the human rights commission compelled the 2nd respondent to resort to Section 32 of the Co-operative Societies Act. Under the above circumstances, it was not reasonably practicable to grant the

opportunity to the committee to state its objection and also to consult the State Co-operative Union before superceding the committee. It is then submitted that the successive dismissal orders given to the 6th respondent by the Society were found to be in violation of various statutory provisions in the Co-operative Societies Act and Rules which necessitated the 2nd respondent to interfere with the disciplinary proceedings under Rule 1 of the Co-operative Societies Rules. It was revealed from the preliminary enquiry report that the attitude of the Board of Directors led by the first petitioner towards 6th respondent was not only inhuman but prejudicial to the interests of the Society. It was because of the persisting illegal activities that it was decided to invoke Section 32 of the Co-operative Societies Act.

4. Sri.V. Manu, learned counsel for the petitioner, Smt. A.J. Anitha, Special Government Pleader, Department of Co-operation and Sri. D. Kishore, counsel for the 6th respondent addressed me on behalf of their respective parties. My attention was drawn to the pleadings and also to the various relevant statutory provisions particularly Section 32 of the Co-operative Societies Act and Section 16 and 36 of the State Human Rights

Commission Act strong reliance was placed by Mr.V. Manu on the judgment of this Court in **Rajagopalan Nair V. State of Kerala** [1995(2) KLT 184]; **Selvi V. District Industries Centre** [2001 (2) KLJ 429]; **James V. Joint Registrar** [1997(2) KLT SN 1]. Smt.Anitha, Government Pleader and Sri.D. Kishore invited my attention to the judgments of Supreme Court in **Visakha & others V. State of Rajasthan & others** [AIR 1997 SC 3011].

5. Having considered the rival submissions addressed before me in the light of the relevant statutory provisions and the ratio emerging from the various judicial precedents cited before me, I am of the view that Ext.P2 requires re-consideration by the State Human Rights Commission and Ext.P1 which is issued placing reliance mostly on Ext.P2 is liable to be cancelled. Ext.P2 order is obviously been placed without notice to the 1st petitioner. The 6th respondent had no allegation whatsoever against the other petitioners even though all the petitioners have been prejudicially affected by Ext.P2 order in view of the directions therein. Section 16 of protection of Human rights act 1993 provides that persons who are likely to be prejudicially affected are entitled for an opportunity for hearing and even to

produce evidence in support of the defence.

6. Mr.Manu's argument based on Section 36(1) of the Protection of Human Rights Act 1993 and Regulation No.17(d) of the Kerala State Human Rights Commission(Procedure) Regulations, 2001 also has force. Section 36 of the Protection of Human Rights Act, 1993 provides as follows:

"Matters not subject to jurisdiction of the Commission: The Commission shall not make inquire into any matter which is pending before the State Commission or any other Commission duly constituted under any law for the time being in force."

7. In fact complaint No.1679/CL/05/KWC had been made by the 6th respondent before the Kerala Women's Commission on the same set of allegations. Ext.P5 will show that the 1st petitioner is contesting that complaint. The submission of the learned counsel for the petitioner that proceedings are even now pending before the Women's Commission was not disputed before me. The learned Government Pleader is certainly right in her submission that under Section 32 an order for supercession can be passed even before an enquiry is conducted; but at the same time it has to be remembered that the allegations of the party respondent

regarding harassment were directed against the 1st petitioner and not against the other members of the Director Board of the Society.

8. In the result I quash Ext.P2 and P1. The State Human Rights Commission, Thiruvananthapuram is directed to take a fresh decision on the complaint submitted by the 6th respondent after issuing notice to the 1st petitioner and also to the other petitioners who are also board members of the 4th respondent Society. The State Human Rights Commission will take decision on the basis of the contentions which will be raised by the petitioners to the complaint. The 6th respondent if so advised will withdraw from the complaint which she had filed before the State Women's Commission within two weeks of receiving copy of this judgment. If she so withdraws it will not be necessary to consider the impact on Section 36 of the Protection of Human rights Act 1993 on the complaint Ext.R3(2) submitted by the 6th respondent before the Human Rights Commission.

Till such time as fresh decision is taken by the Human Rights Commission as directed above and a copy of that decision is placed before the 2nd respondent, the 2nd respondent will not

initiate proceedings under Section 32 of the Co-operative Societies Act against the 4th respondent Society or its Board of Directors.

PIUS C. KURIAKOSE, JUDGE

dpk/btt

PIUS C.KURIAKOSE
Judge

dpk